IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.654 OF 2005
IN
EXECUTION APPLICATION (LDG.) NO.216 OF 2004
IN
SUIT NO.3888 OF 1989

Vipul S. Khanna ....Plaintiff
V/s.
Neena S. Khanna & Ors. ....Defendants

Mr.V.S. Khanna - Plaintiff in person present.

CORAM : S.J. VAZIFDAR, J.
DATED : 4TH OCTOBER, 2007.

P.C. :

1. The Plaintiff has claimed the following reliefs in this Chamber Summons.

> "a). That the Commissioner for Taking Accounts be appointed for the suit properties mentioned in the schedules "A" and "B" with a Direction to partition the suit properties by meets and bound and that he be directed to hand over to the Plaintiff his 1/6th (one - sixth) share in the properties / assets belonging to his late father, Shri Surendrakumar Khanna, with interest at the rate of twenty - one per cent per annum from the date of the suit till the date of realization ;
>
> b). Or, in the alternate, the Commissioner for Taking Accounts be directed to value the sit properties and on the basis of the valuation, the Defendants be directed to pay to the Plaintiff the 1/6th (one - sixth) share in lieu of the Plaintiff's share in the properties / assets belonging to his late

father, Shri Surendrakumar Khanna, with interest at the rate of twenty - one per cent per annum from the date of the suit till the date of realization, and, in default, the Commissioner for Taking Accounts be directed to sell the entire suit properties by Public Auction, by advertising in newspapers in Bombay, and out of the net sale proceeds his 1/6th (one -sixth) share in the properties / assets belonging to his late father, Shri Surendrakumar Khanna, with interest at the rate of twenty - one per cent per annum from the date of the suit till the date of realization be handed over to the Plaintiff ;

c). That the Plaintiff be allowed to bid at such Sale by Public Auction and that in the event of his becoming the purchaser of the said property, the Plaintiff be given the liberty to set off the amount of the purchase money against the amount payable to him under the Decree passed ex-parte on 20.7.1998."

2. By an order dated 25.6.2007, A.M. Khanwilkar, J. made the Chamber Summons absolute in terms of prayer (a).

3. In view of the said order, it is not possible to consider prayers (b) and (c) at this stage. This is for two reasons. Firstly, there is no report by the Commissioner, that the order dated 25.6.2007 cannot be given effect to as partition by meets and bounds, is not possible. Unless such a report is made, it is not possible to consider prayer (b) which is made only in the alternative to prayer (a). Prayer (c) also cannot be considered at this stage as it is a relief consequential to prayer (b). Further if the

Plaintiff desires to now restrict himself to the alternative prayers namely prayers (b) and (c), it will be necessary for him to make an application in this regard.

4. The Commissioner for taking accounts shall obviously comply with the order dated 25.6.2007.

5. With the aforesaid observations, the Chamber Summons is disposed of.